

ORDINANCE NO. 2278 NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
ADDING TITLE 14 "HOUSING" TO THE MORGAN HILL
MUNICIPAL CODE INCLUDING CHAPTER 14.04
"INCLUSIONARY HOUSING" THAT MANDATES 15
PERCENT AFFORDABLE HOUSING UNITS FOR NEW
RESIDENTIAL DEVELOPMENTS WITHIN THE CITY**

WHEREAS, the Morgan Hill City Council desires to adopt a Citywide Inclusionary Housing Program to enhance the public welfare by establishing policies that require the development of housing affordable to households of very low-, low-, and moderate-incomes, enable the City to meet its share of regional housing needs, and implement the City's Housing Element goals and objectives; and

WHEREAS, a Citywide Inclusionary Housing Program will assist in alleviating the lack of available residential land for affordable housing because market-rate development will be required to contribute to the provision of housing affordable for all segments of the Morgan Hill community; and

WHEREAS, a Citywide Inclusionary Housing Program will also assist in meeting the demand for housing affordable to very low-, low-, and moderate-income households caused by the service demands of new residents in market-rate residential units; and

WHEREAS, since 1977, the City has amassed one of the largest below market-rate ("BMR") property portfolios in the State, and has established a BMR Program that provides affordable ownership and rental opportunities to low-income and moderate-income households; and

WHEREAS, the Legislature of the State of California has found that the availability of housing is of critical statewide importance, and that providing housing for all Californians requires the cooperative participation of state and local governments and the private sector; and

WHEREAS, the City intends to establish an Inclusionary Housing Ordinance and affordable housing fees in order to promote this objective, mitigate the impacts of new market-rate housing development on the need for affordable housing, assist in meeting the City's share of the Regional Housing Needs Allocation (RHNA), and assist in implementing the goals, policies and actions specified in the Housing Element of the City's General Plan; and

WHEREAS, the Housing Element of the City's General Plan, adopted by the City Council on February 28, 2015, and approved by the Department of Housing and Community Development on April 21, 2015, includes the following housing policies and actions in support of the creation of an Inclusionary Housing Ordinance:

- Policy HE-1c: RDCS Allocations
- Policy HE-1d: Variety of Housing
- Policy HE-1h: Affordable Housing Strategy Implementation
- Policy HE-1i: Flexible Housing
- Policy HE-1j: New Market-Rate Developments

- Policy HE-11: Incentives for Affordable Developments
- Policy HE-1q: Affordable Housing

WHEREAS, the Legislature recently enacted Assembly Bill 1505, which restores the authority of local governments to impose inclusionary housing requirements on residential rental housing, and the City intends to codify an Inclusionary Housing Program for both ownership and rental housing; and

WHEREAS, the proposed Ordinance requires developers of market-rate for-sale and rental residential projects of two (2) or more units to provide fifteen percent (15%) of the units at affordable rents or affordable sales prices; and

WHEREAS, the City Council adopted Resolution No. 16-018 on February 3, 2016, reaffirming the City of Morgan Hill's commitment to affordable housing; and

WHEREAS, the City Council adopted an ordinance on June 1, 2016 adding Chapter 15.23 Below Market-Rate (BMR) Program Administration to Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code; and

WHEREAS, at its meeting of May 2, 2018, the City Council considered the "Strategy for Increasing the Supply of Affordable Housing" dated March 28, 2018 and prepared by Keyser-Marston Associates, Inc., which included adoption of an Inclusionary Housing Ordinance as one of the recommended strategies.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 14 is hereby added the Morgan Hill Municipal Code as follows.

TITLE 14 - HOUSING

Chapter 14.04 - INCLUSIONARY HOUSING

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14.04.010 - Findings.

The City Council finds that:

- A. Housing prices and rents in the City of Morgan Hill have increased at a significantly higher rate than general wages. The lack of affordable housing forces many residents to pay a very high percentage of their income for housing or to commute considerable distances, adding to air pollution and traffic congestion throughout Santa Clara County. The lack of affordable housing has made it more difficult to recruit workers, potentially affecting the economic vitality of the City. New housing developments do not provide an adequate supply of housing affordable to Low- and Moderate-Income Households.
- B. Rental and owner-occupied housing in Morgan Hill has become steadily more expensive. Although Morgan Hill has historically met its Regional Housing Needs Allocation goals, in recent years, housing costs have escalated sharply, increasing faster than incomes. As a result, there is a severe shortage of adequate, affordable housing for Extremely Low-, Very Low-, Low-, and Moderate-Income Households.
- C. In order to meet the needs of Morgan Hill households, residential developments will need to provide housing for a variety of household types of a range of incomes and ages. The Inclusionary Housing Ordinance codified in this Title will substantially advance the City's interest in providing additional rental and ownership housing affordable to all income levels and dispersed throughout the City.
- D. Continued new housing development that does not include housing for Low- and Moderate-Income Households will further contribute to the current shortage of affordable housing by reducing the small remaining supply of undeveloped land.
- E. On February 18, 2015, the City Council approved the City's Housing Element, a chapter of the General Plan which includes strategies to build new housing to meet the full range of future community housing needs, including affordable and accessible housing.
- F. Implementation of the Inclusionary Housing Ordinance is a necessary part of the City's efforts to meet its Regional Housing Needs Allocation goals and obligations. Pursuant to the Ordinance, at least fifteen percent (15%) of the units in a new housing development of two (2) or more units will be required to be price or rent-restricted and available for occupancy by Low- and Moderate-Income households. In some circumstances, developers will have an option to provide Inclusionary Units off-site or to pay an in-lieu housing fee.

14.04.020 - Purpose.

The purpose of this Chapter is to further the City's efforts to require housing available to Extremely Low-Income, Very Low-Income, Low-Income and Moderate-Income Households. The Housing Element of the City's General Plan implements the established policy of the State of California that each community should foster an adequate supply of housing for persons at all economic levels.

Providing the Inclusionary Units required by this Chapter will help to ensure that part of Morgan Hill's remaining developable land is used to provide affordable housing to encourage an economically balanced community. Requiring builders of new market-rate housing to include some housing affordable to households at a range of incomes is consistent with the goal of fostering an adequate supply of housing for persons at all income levels, and serves the goal of mixed-income housing.

The Inclusionary Housing Ordinance is required in order to promote and protect the public health, safety, and general welfare while preserving and enhancing economic diversity and inclusiveness within the City.

14.04.030 - Definitions.

When used in this Chapter, the following terms shall have the meaning set forth below:

1. **"Affordable Ownership Cost"** means average monthly housing costs during the first calendar year of a household's occupancy, including mortgage principal and interest payments, mortgage insurance fees, if any, property taxes, reasonable allowances for utilities and property maintenance and repairs, homeowners insurance, and homeowners' association dues that in the aggregate do not exceed thirty five percent (35%) of the applicable income limit for Eligible Households for a particular Inclusionary Unit that is a for-sale unit.
2. **"Affordable Rent"** means a monthly rent and utility allowance that does not exceed the limits as defined in Section 50053 of the California Health and Safety Code, as may be amended from time-to-time.
3. **"Affordable Sales Price"** means a sales price that will result in an Affordable Ownership Cost for an Eligible Household of the applicable income limit for an Inclusionary Unit that is a for-sale unit, and that does not exceed the limits as defined in Section 50052.5 of the California Health and Safety Code, as may be amended from time-to-time.
4. **"Applicant"** means a person or entity who applies for approvals for a Residential Project, and if the applicant does not own the property on which the Residential Project is proposed, also means the owner or owners of the property.
5. **"Area median income" or "AMI"** means the median household income of households in Santa Clara County, adjusted for household size, as determined and published by the California Housing and Community Development Department (HCD).
6. **"Assumed Household Size"** means, for the purpose of establishing Affordable Sales Prices and Affordable Rent, a household with a total number of members equal to the number of bedrooms in the Dwelling Unit, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and subject to applicable federal rules (if any). For example, the assumed household size for a 3-bedroom home is a 4-person household.

7. **"Building Permit"** means full structural building permits as well as partial permits such as foundation-only permits.
8. **"Certificate of Occupancy"** means that construction is complete and the City Building Official or his or her designee has signed off the "Residential Dwelling Occupancy Approval" on the backside of the City of Morgan Hill Building Permit Card.
9. **"City Manager"** means the City Manager of Morgan Hill or his or her designee.
10. **"Contiguous"** means any parcel of land that is:
 - a. Touching another parcel at any point;
 - b. Separated from another parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or
 - c. Separated from another parcel only by other real property of the Applicant which is not subject to the requirements of this Chapter at the time of the Planning Permit application by the Applicant.
11. **"Density Bonus"** means an increase in the number of units permitted in a proposed residential project provided pursuant to the State Density Bonus Law as set forth in Section 65915 *et seq.* of the California Government Code, as amended.
12. **"Downtown"** means the geographical area as depicted in Figure CNF-2 of the General Plan.
13. **"Dwelling Unit"** means a residential unit consisting of one or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities.
14. **"Eligible Household"** means a household whose Gross Annual Household Income does not exceed the applicable maximum for a given Inclusionary Unit.
15. **"Extremely Low-Income Household"** means a household with a Gross Annual Household Income that does not exceed 30% of AMI for Santa Clara County. This definition corresponds to the definition of extremely low-income household used for state- and federally-assisted housing programs. Extremely Low-Income Households are a subset of Very Low-Income Households.
16. **"First Approval"** means the first of the following approvals to be issued with respect to a Residential Project: building permit, planned development permit, tentative parcel map, tentative subdivision map, conditional use permit, site and architectural review permit, or other discretionary City land use approval.
17. **"For-sale project"** means a Residential Project, or portion thereof, that is intended to be sold to owner-occupants upon completion.

18. **"Gross Annual Household Income"** means the combined adjusted gross (pre-tax) income of all adult persons in a household who is an Applicant for an Inclusionary Unit, or who are residing in an Inclusionary Unit, as calculated pursuant to the Section 8 Program under the United States Housing Act of 1937, as amended, or its successor.
19. **"Inclusionary Affordable Housing Agreement"** means an agreement between the City and an Applicant, governing how the Applicant will comply with this Chapter.
20. **"Inclusionary Unit"** means a Dwelling Unit that pursuant to this Chapter is required to be rented at an Affordable Rent or sold at an Affordable Sales Price to Extremely Low-, Very Low-, Low-, or Moderate-Income Households as applicable.
21. **"In-Lieu Fee"** means the fee payable pursuant to this Chapter as an alternative to the construction of on-site Inclusionary Units.
22. **"Low-Income Household"** means a household with a Gross Annual Household Income between 51% and 80% of AMI for Santa Clara County. This definition corresponds to the definition of lower income household used for state- and federally-assisted housing programs.
23. **"Market-Rate Unit"** means a Dwelling Unit offered on the open market at the prevailing market-rate for purchase or rental.
24. **"Moderate-Income Household"** means a household with a Gross Annual Household Income between 81% and 120% of AMI for Santa Clara County. This definition corresponds to the definition of moderate-income household for state-assisted housing programs.
25. **"Regional Housing Need Allocation" (RHNA)** means the State of California mandated process that identifies the total number of housing units by affordability level that each jurisdiction must accommodate in its Housing Element.
26. **"Rental Project"** means a Residential Project, or portion thereof, that is intended to be rented to tenants upon completion.
27. **"Residential Project"** means a project undertaken for the purpose of development of land for residential purposes that requires the issuance of a discretionary or ministerial approval or permit, including a permit for construction, and that will include two (2) or more Dwelling Units. "Residential Project" also includes developments on Contiguous lots for which applications are filed by the same property owner or Applicant and that will include two (2) or more Dwelling Units.
28. **"Very Low-Income Household"** means a household with a Gross Annual Household Income that does not exceed 50% of AMI for Santa Clara County. This definition corresponds to the definition of very low-income household used for state- and federally-

assisted housing programs. Very Low-Income Households are a subset of Low-Income Households.

14.04.040 - General Requirements.

- A. Percentage Requirement. Except as provided in paragraphs B and D of this Section, at least fifteen percent (15%) of all units in Residential Projects shall be Inclusionary Units that shall be made available at Affordable Rents or Affordable Sales Prices as prescribed in this Section. The Inclusionary Units shall be approved, and construction of the Inclusionary Units shall be completed not later than the times prescribed in Section 14.04.050 of this Chapter, unless an alternative requirement is approved pursuant to Section 14.04.070 of this Chapter.

Whenever application of the requirements of this Chapter results in a fractional number of required Inclusionary Units, if the fraction is 0.50 or greater, construction of the next higher whole number of Inclusionary Units shall be required, and where the fraction is 0.49 or less, payment of the applicable housing fee adopted by City Council shall be required for the fractional unit.

- B. For-Sale Projects in Downtown. All new for-sale Residential Projects consisting of two (2) or more Dwelling Units located within Downtown are required to restrict ten percent (10%) of the Dwelling Units for sale at Affordable Sales Prices to Moderate-Income Households. Such Dwelling Units must be sold to Eligible Households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five (45) years.
- C. For-Sale Projects Outside of Downtown. All new for-sale Residential Projects consisting of two (2) or more Dwelling Units located within the City but outside of Downtown are required to restrict fifteen percent (15%) of the Dwelling Units for sale at Affordable Sales Prices to Moderate-Income Households. Such Dwelling Units must be sold to Eligible Households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five (45) years.
- D. Rental Projects in Downtown. All new rental Residential Projects consisting of two (2) or more Dwelling Units located within Downtown are required to restrict ten percent (10%) of the Dwelling Units for rent at Affordable Rents and occupancy by Low-Income and Very Low-Income Households. Such Dwelling Units must be occupied by, or if vacant, available for occupancy by Eligible Households, and such restrictions shall be documented in a recorded Inclusionary Affordable Housing Agreement with a term of fifty-five (55) years. At least one-half of the required Inclusionary Units shall be offered at Affordable Rents exclusively to Very Low-Income Households.
- E. Rental Projects Outside of Downtown. All new rental Residential Projects consisting of two (2) or more Dwelling Units located within the City but outside of Downtown are required to restrict fifteen percent (15%) of the Dwelling Units for rent at Affordable Rents and occupancy by Low-Income and Very Low-Income Households. Such Dwelling Units must be occupied by, or if vacant, available for occupancy by Eligible Households, and such restrictions shall be documented in a recorded Inclusionary Affordable Housing Agreement with a term of fifty-five (55) years. At least one-half of the required Inclusionary Units shall be offered at Affordable Rents exclusively to Very Low-Income Households.

- F. Location and Design of Inclusionary Units. All Inclusionary Units shall be reasonably dispersed throughout the Residential Project, and shall be comparable to the design of the market-rate units in the Residential Project in terms of distribution of model types, number of bedrooms, appearance, materials and quality of finishes. There shall not be significant identifiable differences between Inclusionary Units and market-rate dwelling units that are visible from the exterior of the dwelling units, and the size and design of the dwelling units shall be reasonably consistent with the market-rate units in the development. Occupants of Inclusionary Units shall be provided the same access to project amenities, recreational facilities, and common areas as occupants of market-rate units.
- G. For-sale Projects. Inclusionary Units that will be offered for sale shall be sold for owner-occupancy at an Affordable Sales Price to Moderate-Income Households that qualify as Eligible Households.
- H. Rental projects. The Inclusionary Units that are constructed in market-rate Rental Projects shall be offered for rent to Eligible Households at Affordable Rents to Low- and Very Low-Income Households. At least one-half of the required Inclusionary Units in Rental Projects, shall be offered at Affordable Rents exclusively to Very Low-Income Households.
- I. Exceptions. The affordability levels required for a Residential Project may be modified by written agreement between the City and the Applicant upon a finding that such modification is necessary to effectively achieve the City's RHNA goals in the then-current housing element cycle.

14.04.050 - Time of performance.

- A. An application for First Approval of a Residential Project will not be deemed complete until the Applicant has submitted plans and proposals that demonstrate how the Applicant proposes to meet requirements of this Chapter, including any plans for the construction of on-site units pursuant to Section 14.04.040 of this Chapter or the Applicant's proposal for an alternative means of compliance pursuant to Section 14.04.070, of this Chapter.
- B. Conditions to carry out the purposes of this Chapter shall be imposed on the First Approval for a Residential Project. Additional conditions may be imposed on later City approvals or actions, including without limitation planned development permits, tentative parcel maps, tentative subdivision maps, conditional use permits, site and architectural review permits, or building permits. The conditions of approval included with the First Approval of the Residential Project shall further provide that prior to the recordation of the parcel map or final map in the case of subdivisions and/or prior to the issuance of building permits in the case of all other land use permits to which this Chapter applies, the Applicant shall enter into an Inclusionary Affordable Housing Agreement prepared by the City Attorney and approved by the City Manager that contains specific requirements implementing the conditions of approval including, but not limited to, as applicable, the number of Inclusionary Units, the level(s) of affordability, the location and type of Inclusionary Units, timing of construction of Inclusionary Units in relation to the construction of the Market-Rate units contained in the development, marketing and selection of tenants and homebuyers, and the amount of the In-Lieu Fee, if any. The Inclusionary Affordable Housing Agreement may be amended by the

parties, provided the amendment is consistent with the condition of approval imposed as part of the First Approval and the then-existing City approvals. If such proposed amendment is minor or technical in nature, the City Manager shall have authority to approve or disapprove the amendment on behalf of the City. If such proposed amendment makes a substantive or material change to the Inclusionary Affordable Housing Agreement, such amendment shall be effective only following notice and hearing and such other procedures as may be required by law, and approval by the City department that issued the First Approval for the project.

- C. No building permit shall be issued for any Market-Rate unit until the Applicant has obtained permits for Inclusionary Units sufficient to meet the requirements of Section 14.04.040 of this Chapter, or received approval of an alternative requirement under Section 14.04.070 of this Chapter. No final inspection for occupancy for any Market-Rate unit shall be completed until the Applicant has constructed the Inclusionary Units required by Section 14.04.040 of this Chapter, or completed corresponding alternative performance under Section 14.04.070 of this Chapter. The time requirements set forth in this subsection for issuance of building permits for Market-Rate units and for final inspections for occupancy for Market-Rate units may be modified to accommodate phasing schedules, model variations, or other factors in a Residential Project, if the City determines this will provide greater public benefit.

14.04.060 - Continued affordability and City review of occupancy.

- A. Term of affordability—For-sale projects. A resale restriction, covenant, deed of trust and/or other documents in form prepared by the City Attorney, shall be recorded against each Inclusionary Unit that is a for-sale unit. These documents shall have an initial term of forty-five (45) years, and shall be renewed upon each change of title to the Inclusionary Unit. The resale restriction, or other documents required by this subsection, and any change in the form of any such documents, shall be approved by the City Manager or his or her designee prior to execution and recordation of such document. The City shall be a party to the resale restriction or other documents required by this subsection and shall have the right to enforce the covenants and restrictions contained therein.
- B. Term of affordability—Rental projects. A regulatory agreement, covenant, deed of trust, and/or other documents prepared by the City Attorney, shall be recorded against each Residential Project that contains Inclusionary Units that are rental units. These documents shall have a term of fifty-five (55) years. The regulatory agreement and other documents required by this subsection, shall run with the land and shall not be affected by the sale of the property or units in the project. The regulatory agreement and other documents required by this subsection, and any modification to such document, shall be approved by the City Manager or his or her designee and approved as to form by the City Attorney, prior to execution and recordation of such document. The City shall be a party to the regulatory agreement or other documents required by this subsection and shall have the right to enforce the covenants and restrictions contained therein.
- C. Eligibility requirements. No household shall be permitted to begin occupancy of an Inclusionary Unit unless the City or its designated administrator as referenced in the Below Market-Rate (BMR) Program Administration Ordinance 2204, Chapter 15.23, Section 15.23.040, Duties of Program Administrator, has approved the household's eligibility. If the

City or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of Inclusionary Units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with rules approved by the City Manager or his or her designee.

- D. Below Market-Rate (BMR) Program Administration. Ordinance No. 2204, Chapter 15.23 of Title 15 of the Morgan Hill Municipal Code, is hereby incorporated, including but not limited to, Section 15.23.010 Purpose, 15.23.020 Definitions, 15.23.030 Applicability, 15.23.040 Duties of Program Administrator, 15.23.050 Occupancy and Sale Restrictions, 15.23.060 Affordable Housing Agreement, 15.23.070 Approved Program Participants and Vendors, 15.23.080 Default, Foreclosure, Loss of Units, 15.23.090 Annual Report, and 15.23.095 Enforcement.

14.04.070 - Alternatives.

In lieu of building Inclusionary Units within a Residential Project, an Applicant may propose to satisfy the requirements of this Chapter by one of the following alternative modes of compliance, provided that the Applicant includes such proposal in its application for the First Approval of the Residential Project, and further provided that the criteria stated in the relevant subsection below are satisfied.

- A. Rental units in for-sale projects. Where owner-occupied Inclusionary Units are required by Section 14.04.040 of this Chapter, an Applicant may instead elect to construct as part of the Residential Project the same or a greater number of rental units, affordable to Extremely Low-, Very Low-, Low- and Moderate-Income Households in the proportions and at the rents as prescribed in Section 14.04.030 of this Chapter. Substitution of rental units shall be allowed under this subsection only if either: (1) the rental units are at least equal in number of bedrooms to the owner-occupancy units that would have been allowed, or (2) any comparative deficiency in the number of bedrooms is compensated for by additional units and/or affordability to households with lower incomes.
- B. Off-site construction. An Applicant may propose to construct, or make possible construction by another developer, units that will not be physically contiguous to the market-rate units (or units that are physically contiguous to the market-rate units if the City determines this will provide greater public benefit). Off-site construction pursuant to this subsection shall be approved only if:
1. An Inclusionary Affordable Housing Agreement acceptable to the City Manager or his or her designee that requires an equal or greater number of Inclusionary Units as required under Section 14.04.040 of this Chapter is recorded;
 2. Approval has been secured for the off-site units not later than the time the Residential Project is approved, and completion of the off-site units is secured by a requirement that Certificates of Occupancy for the related Market-Rate units will be issued after Certificates of Occupancy have been issued for the Inclusionary Units, provided that the time requirements set forth in this subsection for final inspections for occupancy for Market-Rate units may be modified to accommodate

phasing schedules, model variations, financing requirements, or other factors, if the City determines this will provide greater public benefit;

3. The off-site units will be greater in number, larger, or will be affordable to households with lower incomes than would otherwise be required by Section 14.04.040 of this Chapter;
4. Financing or a viable financing plan is in place for the off-site units;
5. If the off-site units receive any public assistance, the developer of the market-rate project will contribute economic value to the off-site units equivalent to the cost that would have been incurred to provide the required number of Inclusionary Units on-site in the Residential Project; and
6. The City may require that completion of off-site units shall be further secured by the developer's agreement to pay an In-Lieu Fee in the amount approved by City Council in the event the off-site units are not timely completed.

C. Land dedication. An Applicant may propose to dedicate without cost to the City, a lot or lots within or contiguous to the Residential Project, sufficient to accommodate at least the required Inclusionary Units for the Residential Project. An election to dedicate land in lieu of compliance with other provisions of this Chapter shall be allowed only if:

1. The value of the lot or lots to be dedicated is sufficient to make development of the otherwise required Inclusionary Units economically feasible, and financing or a viable financing plan is in place for at least the required number of Inclusionary Units; and
2. The lot or lots are zoned for and suitable for construction of affordable housing at a feasible cost, served by utilities, streets and other infrastructure; there are no hazardous materials present or other material constraints on development of affordable housing on the lot or lots; and land use approvals have been obtained as necessary for the development of the Inclusionary Units on the lot or lots.

D. In-lieu housing fee. For Residential Projects for which a Residential Detached Low General Plan Land Use designation (allowing up to four (4) dwelling units per acre) (10,890 sf lots) applies; for Residential Projects of four Dwelling Units or less; and as provided in Section 14.04.040A, whenever application of the requirements of this Chapter results in a fractional number of required Inclusionary Units, where the fraction is 0.49 or less; the Applicant may elect to pay an In-Lieu Fee, instead of developing the Inclusionary Units required in Section 14.04.040 of this Chapter, pursuant to the requirements set forth below in this subsection.

1. The initial In-Lieu Fee schedule shall be set by City Council resolution or other action of the City Council so that the fee amounts are not greater than the difference between: (a) the amount of a conventional permanent loan that an Inclusionary Unit would support based on the Affordable Rent or Affordable Sales Price for the

Inclusionary Unit; and (b) the estimated total development cost of a prototypical Inclusionary Unit.

2. The City Council may annually review the fees authorized by this subsection by resolution, and may, based on that review, adjust the fee amount. For any annual period during which the City Council does not review the fee authorized by this subsection, fee amounts shall be adjusted once by the City Manager or his or her designee based on the construction cost index.
3. In-Lieu Fees shall be calculated based on the fee schedule in effect at the time the fee is paid. In-Lieu Fees shall be paid prior to issuance of building permits for Market-Rate units in a Residential Project. If building permits are issued for only part of a Residential Project, the fee amount shall be based only on the number of units then permitted. Where payment is delayed, in the event of default or for any other reason, the amount of the In-Lieu Fee payable under this subsection shall be based upon the fee schedule in effect at the time the fee is paid.

14.04.080 - Use of in-lieu fees.

- A. All In-Lieu Fees collected pursuant to this Chapter shall be deposited into a separate account to be designated as the City of Morgan Hill Housing In-Lieu Fee Fund.
- B. The In-Lieu Fees collected pursuant to this Chapter, and all earnings from investment of such fees, shall be expended exclusively to provide or assure continued provision of affordable housing in the City through acquisition, construction, development assistance, rehabilitation, financing, rent subsidies, or other methods, and for costs of administering programs that serve those ends. The housing assisted with such funds shall be of a type, or at an affordability level, for which there is a need in the City and that is not adequately supplied by private development

14.04.090 - Waiver of requirements.

Notwithstanding any other provision of this Chapter, the requirements of this Chapter shall be waived, adjusted, or reduced if the Applicant demonstrates that applying the requirements of this Chapter would take property in violation of the constitutions of the United States or the State of California or would otherwise result in an unconstitutional application of this Chapter. To receive a waiver, adjustment or reduction under this Section, the Applicant must file a written request together with the development application(s) when applying for a First Approval for the Residential Project, and/or as part of any appeal that the City provides as part of the process for the First Approval. The written request shall provide substantial evidence showing that applying the requirements of this Chapter would take property in violation of the constitutions of the United States or the State of California or would otherwise result in an unconstitutional application of this Chapter. The City may assume that: (a) the Applicant will provide the most economical Inclusionary Units feasible meeting the requirements of this Chapter; and (b) the Applicant is likely to obtain housing subsidies when such funds are reasonably available. The waiver, adjustment, or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this Section.

14.04.100 - Enforcement.

- A. The City Council may adopt guidelines, by resolution, to assist in the implementation and administration of all aspects of this Chapter.
- B. The City shall be authorized to enforce the provisions of this Chapter and all Inclusionary Affordable Housing Agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deed of trust, and other requirements placed on Inclusionary Units by civil action and any other proceeding or method permitted by law.
- C. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any Applicant or owner from the requirements of this Chapter.
- D. The remedies provided for in this Chapter shall be cumulative and not exclusive, and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.
- E. The City shall evaluate the effectiveness of the Ordinance codified in this Title, for review by the City Council, five (5) years after the operative date of this Title.
- F. No permit, license, map, or other approval or entitlement for a Residential Project shall be issued, including without limitation a final inspection or Certificate of Occupancy, until all applicable requirements of this Chapter have been satisfied.

14.04.110 - Monitoring.

The Inclusionary Housing Guidelines adopted or to be adopted by the City, and each Inclusionary Affordable Housing Agreement shall include provisions for monitoring by the City of each Residential Project and each Inclusionary Unit for compliance with the terms of this Chapter, the Inclusionary Housing Guidelines, and the applicable Inclusionary Affordable Housing Agreements. The City and/or its designated administrator shall also monitor and submit compliance reports to governmental agencies as required by law. Such provisions shall require property owners to submit annual compliance reports to the City and/or its administrator, and shall authorize the City or its administrator to conduct periodic on-site inspections and audits to ensure compliance with all applicable laws, policies, and agreements. The City Council may adopt fees to cover the City's costs of monitoring and compliance. Such fees shall be payable by the property owner and shall be deposited into the City's Housing In-Lieu Fee Fund.

14.04.120 - On-Site Inclusionary Housing Incentives.

- A. The developer of a Residential Project providing all required Inclusionary Units on the same site as the Market-Rate units may, at the developer's option and concurrently with the submittal of the Affordable Housing Plan and the earlier of the zoning or Planning Permit application, submit a written request for one or more of the following on-site inclusionary housing development incentives:

1. Density Bonus. The Residential Project may receive a density bonus if the Residential Project includes affordable units in accordance with the threshold requirements for density bonus pursuant to California Government Code Section 65915 *et seq.* For Residential Projects qualifying for a density bonus pursuant to this subsection, the City shall, upon request of the Applicant at the time of application for the First Approval, authorize a density bonus in the amount specified in California Government Code Section 65915 *et seq.* unless such a density bonus would cause an adverse impact to the public health, safety and welfare, including but not limited to historic or natural resources, or the environment. The City shall not provide any other incentives or concessions, other than those listed in this Section 14.04.120, in addition to such density bonus unless otherwise required by law.

2. Reduction in Minimum Setback Requirements. The Developer may request a reduction in the minimum setback requirements for the Residential Project, provided such reduction will not cause an adverse impact to the public health, safety and welfare, including but not limited to historic or natural resources, or the environment.

3. Alternative Unit Type. The Developer may request to provide Inclusionary Units that are of a different unit type than the Market-Rate units to be constructed within the Residential Project; provided however, the Inclusionary Units shall have the same bedroom count in the same percentage distribution as the Market-Rate units.

4. Alternative Interior Design Standards. The Developer shall provide the same amenities within the Inclusionary Units as provided in the Market-Rate units, but may request to provide different but functionally equivalent amenities for the Inclusionary Units; provided however, residents of Inclusionary Units shall have access to all common areas of the Residential Project equal to the access provided to residents of Market-Rate units.

SECTION 2. The Development Standards considered and adopted by Resolution of the City Council of the City of Morgan Hill at its regular meeting of July 18, 2018, as such Development Standards may be amended, are hereby incorporated by this reference.

SECTION 3. Adoption of this Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City; specifically, adoption of the Ordinance is consistent with and implements several policies and programs reviewed in the Morgan Hill 2035 Environmental Impact Report (EIR) for the General Plan Update, which was certified and adopted on July 27, 2016 by Council Resolution No 16-128. No additional environmental analysis is warranted at this time. All future discretionary development that may be impacted by the Ordinance will be subject to a project-specific CEQA analysis as part of the required planning entitlement review (e.g. Rezoning, Site and Architectural Review, Subdivision, etc.) to determine if there are any environmental impacts.

SECTION 4. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 18TH DAY OF JULY 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 25TH DAY OF JULY 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:


AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine, Rene Spring Caitlin Robinett Jachimowicz, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:



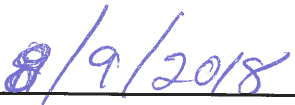
STEVE TATE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

DATE:



8/9/2018

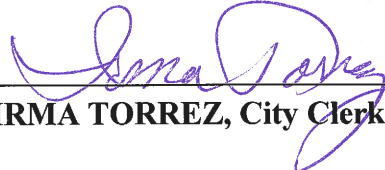
Effective Date: August 25, 2018

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2278, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 25th day of July 2018.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 8/9/2018


IRMA TORREZ, City Clerk